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IN THE SUPREME COURT OF INDIA

I.A. No. _____ / 2015
IN

W.P. (C) NO. 494 OF 2012

IN THE MATTER OF :

Justice K.S. Puttaswamy (Retd.) & Anr.

Petitioners

Versus

Union of India & Ors.

Respondents

AND

IN THE MATTER OF :

Insurance Regulatory Development Authority of India
Parisrama Bhavan,
5-9-58/B, 3rd Floor,
Basheer Bagh, Hyderabad-500004

I.A. NO. _____ OF 2015

AN APPLICATION / PETITION ON
BEHALF OF INSURANCE
REGULATORY AND DEVELOPMENT
AUTHORITY OF INDIA FOR
INTERVENTION

I.A. NO. _____ OF 2015

AN APPLICATION / PETITION ON
BEHALF OF INSURANCE
REGULATORY AND DEVELOPMENT
AUTHORITY OF INDIA FOR
MODIFICATION/CLARIFICATION
OF INTERIM ORDER DATED
11.8.2015

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE APPLICANT: **PARMANAND GAUR**

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IN THE MATTER OF :

Insurance Regulatory and Development Authority of India
Parisrama Bhavan,
5-9-58/B, 3rd Floor,
Basheer Bagh, Hyderabad-500004.

**AN APPLICATION ON BEHALF OF INSURANCE
REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA
FOR INTERVENTION.**

To

The Chief Justice of India and his
companion Justices of the Supreme
Court of India.

The humble application/Petition of the
Applicant/petitioner above-named.

MOST RESPECTFULLY SHOWETH :

1. That Applicant/petitioner herein is an Authority established under the Insurance Regulatory and Development Authority Act, 1999 (hereinafter referred to as IRDA Act) to

protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto, is seeking an intervention for being heard in the matter in as much as any orders passed in the above mentioned matter is likely to affect the interest of holders of insurance policies and also the orderly growth of the Insurance industry as envisaged under the Insurance Regulatory and Development Authority Act 1999. It is the statutory duty of the applicant/petitioner to protect the interest and welfare of the policy holders and ensure the orderly growth of the insurance industry.

2. The petitioner in the writ petition is seeking to restrain inter-alia the Respondent No.1, Union of India from issuing 'Aadhar' numbers by way of implementing and executive order dated 28.1.2009 of the Respondent No.1. It is the case of the Petitioners that the constitution of the Unique Identification Authority of India (UIDAI) and collection of biometric details of citizen of India by the UIDAI is a violation of the right to privacy.

3. Pursuant to establishment of the UIDAI by the Government of India and implementation of the Aadhar scheme further to notification dated January 28, 2009 issued by the Government of India, various instrumentalities of State,

including the Applicant/Petitioner have issued Aadhar acceptance notification adopting the Aadhar letter as a valid proof of identity.

4. That the aforesaid matter is pending in this Hon'ble Court alongwith connected matters. In this batch of matters, a scheme propounded by the Government of India popularly known as "Aadhar Card Scheme" is under attack on various grounds.

1. That vide order dated 11.8.2015 passed by this Hon'ble Court inter-alia passed the following order :-

"...Therefore, in our opinion to give a quietus to the kind of controversy raised in this batch of cases once for all, it is better that the ratio decidendi of **M.P. Sharma** (*supra*) and **Kharak Singh** (*supra*) is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength."

The Hon'ble Court directed the Registry to place these matters before the Hon'ble Court the Chief Justice of India for appropriate orders.

5. On the same date, i.e. 11.8.2015 this Hon'ble Court also passed certain interim directions and observed as under:-

" Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDA proceed in the following manner:-

1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card;
2. The production of an Aadhaar card will not be condition for obtaining any benefits otherwise due to a citizen;
3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of food grains, etc. and cooking fuel, such as kerosene. The

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Aadhaar card may also be used for the purpose of the LPG Distribution Scheme; “

6. That Authority has also prescribed usage of Aadhar card details in various areas. Although the initiatives of the Authority vis a vis usage of Aadhar card do not confer any specific benefits or infringe in the privacy of the customers or policyholders, it is likely that any orders passed by this Hon'ble Supreme Court without hearing the petitioner may affect the interest of the policy holders and hinder the growth of the insurance industry. The petitioner is also filing an application for modification of the interim order dated 11.8.2015.

7. The Applicant accordingly seeks leave to address this Hon'ble Court in respect of the present petition given the importance of the subject matter especially in relation to the discharge of the duties of the Applicant in the insurance industry.

8. The Applicant/Petitioner also seeks appropriate clarification from the Hon'ble Court on the fate of already seeded Aadhar prior to the order dated August 11, 2015 of the Hon'ble Court. The applicant also seeks to ascertain the treatment of the insured and particularly insures, and

intermediaries or any other party who are under regulatory control of IRDAI.

9. That unless the present intervenor is allowed to intervene as a party – Respondent in the present writ petition, the intervenor will be highly prejudiced. The outcome of the present appeal will directly and substantially affect the rights and interests of insurer and insured and also all or any other others parties under the preview of Regulations of IRDAI and also the present applicant / intervenor.

10. That in view of the aforesaid facts and circumstances, it would be in the interest of justice to allow the applicant to intervene in the proceedings pending before this Hon'ble Court and assist the court in arriving at a meaningful determination of the issues involved.

PRAYER

It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to:

- a) allow the present application for intervention in the interest of justice
- b) Any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

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Drawn & Drafted by
Sh. Dipak K Nag
Advocate

Drafted on: 29.09.2015
New Delhi

Filed on: 01-10-2015

Filed by

(Parmanand Gaur)
Advocate for the Applicant/
Petitioner

IN THE SUPREME COURT OF INDIA

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Petitioners

Versus

Union of India & Ors.

Respondents.

A F F I D A V I T

I, Mukesh Sharma S/o Late Sh. D.P. Sharma aged about 59 years resident of Flat No. E-13, M.K. Residency Plot No. 8B Sector-11 Dwarka, New Delhi, presently working as Joint Director of the applicant/petitioner (IRDAI) do hereby solemnly affirm and state as under:-

1. That I am the Applicant/Petitioner in the above-noted application/petition as such I am well conversant with the facts of this case based on information derived from the office record of the case and I am competent to swear this affidavit.

2. That the application for intervention which have been drafted under my instructions and I have understood the same and state that the facts stated therein are true to my knowledge on the basis of the information derived from the records of the case and are believed to be true.

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3. That the annexures to the application/petition are true copy of their originals and formed part of the record of the Courts below.

DEPONENT

VERIFICATION

I the above-named deponent do hereby verify that the facts stated in paras 1 to 3 of the above affidavit and true to my knowledge and are believed to be true and nothing material has been concealed therefrom from this Hon'ble Court.

Verified at New Delhi this the 30th day September of 2015

DEPONENT

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IN THE SUPREME COURT OF INDIA

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Parisrama Bhavan,
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**AN APPLICATION ON BEHALF OF INSURANCE
REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA
FOR MODIFICATION/CLARIFICATION OF INTERIM ORDER
DATED 11.8.2015.**

To

The Chief Justice of India and his
companion Justices of the Supreme
Court of India.

The humble application/Petition of the
Applicant/petitioner above-named.

MOST RESPECTFULLY SHOWETH :

1. That the applicant/Petitioner herein is seeking an intervention through another application/petition in the above mentioned Writ Petition (Civil) No. 494/2012.

2. That Applicant/petitioner herein is an Authority established under the Insurance Regulatory and Development Authority Act, 1999 (hereinafter referred to as IRDA Act) to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto, is seeking an modification/clarification of the interim order dated 11.8.2015. It is respectfully submitted that the interim order dated 11.8.2015 or any other orders which may passed in the above mentioned matter is likely to affect the interest of holders of insurance policies and also the orderly growth of the Insurance industry as envisaged under the Insurance Regulatory and Development Authority Act 1999, unless the said interim order dated 11.8.2015 is clarified and or modified. It is the statutory duty of the applicant/petitioner to protect the interest and welfare of the policy holders and ensure the orderly growth of the insurance industry.

3. The petitioner in the writ petition is seeking to restrain inter-alia the Respondent No.1, Union of India from issuing 'Aadhar' numbers by way of implementing and executive order dated 28.1.2009 of the Respondent No.1. It is the case of the Petitioners that the constitution of the Unique Identification

Authority of India (UIDAI) and collection of biometric details of citizen of India by the UIDAI is a violation of the right to privacy.

4. Pursuant to establishment of the UIDAI by the Government of India and implementation of the Aadhar scheme further to notification dated January 28, 2009 issued by the Government of India, various instrumentalities of State, including the Applicant/Petitioner have issued Aadhar acceptance notification adopting the Aadhar letter as a valid proof of identity.

5. That the aforesaid matter is pending in this Hon'ble Court alongwith connected matters. In this batch of matters, a scheme propounded by the Government of India popularly known as "Aadhar Card Scheme" is under attack on various grounds.

1. That vide order dated 11.8.2015 passed by this Hon'ble Court inter-alia passed the following order :-

"...Therefore, in our opinion to give a quietus to the kind of controversy raised in this batch of cases once for all, it is better that the ratio decidendi of **M.P. Sharma** (*supra*) and **Kharak Singh** (*supra*) is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the

right to privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength."

The Hon'ble Court directed the Registry to place these matters before the Hon'ble Court the Chief Justice of India for appropriate orders.

6. On the same date, i.e. 11.8.2015 this Hon'ble Court also passed certain interim directions and observed as under:-

" Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDA proceed in the following manner:-

1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card;
2. The production of an Aadhaar card will not be condition for obtaining any benefits otherwise due to a citizen;

3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of foodgrains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme; “

7. That Authority has also prescribed usage of Aadhar card details in various areas. Although the initiatives of the Authority vis a vis usage of Aadhar card do not confer any specific benefits or infringe in the privacy of the customers or policyholders, it is likely that any orders passed by this Hon'ble Supreme Court without hearing the petitioner may affect the interest of the policy holders and hinder the growth of the insurance industry. The petitioner has also filed an application/petition for intervention in the above mentioned matter.

8. The Applicant/Petitioner seeks appropriate clarification from the Hon'ble Court on the fate of already seeded Aadhar prior to the order dated August 11, 2015 of the Hon'ble Court. The applicant also seeks to ascertain the treatment of the insured and particularly insures, and intermediaries or any other party who are under regulatory control of IRDAI.

9. That it is respectfully submitted that the Petitioner herein has made the usage of Aadhar as part of identification purposes particularly in the following statutory Regulations which have been introduced and in pursuance to establishment of UIDAI by the Government of India and implementation of Aadhar scheme. The usage of Aadhar as part of identification scheme alongwith the necessity thereof in brief are as under:-

(i) Corporate Agents Regulations

Under the IRDAI (Registration of Corporate Agents) Regulations, 2015 only Specified Persons and Authorised Verifiers are permitted to distribute insurance policies. These Specified Persons and Authorised Verifiers shall have to undergo training and also pass an examination for obtaining a certificate to be issued by the IRDAI to act as Specified Persons/Authorised Verifiers. They have to apply through the Principal Officer of the Corporate Agent to the IRDAI for obtaining the Certificate.

Under Regulation 7(3)(c) of the said regulation a person propose to act as a specified for a Corporate Agent shall apply in format specified in Annexure 3 of the said regulation. Similarly, under regulation 25(2)(iii) of the said regulations, an

Authorised Verifier is required to apply in format specified in Annexure 5 for a certificate. For the purpose of identification of such persons, furnishing of PAN Number or Adhaar Number is made mandatory.

(ii) Reasons for relying on Adhaar Card:

The minimum qualification prescribed for a Specified Person/Authorised Verifier is 12th Standard to encourage unemployed youth in rural and semi-urban areas to take up insurance distribution as a profession. Such person in all likelihood may not have the PAN Number. As an alternative and also the fact that around 80% of the population in India have already enrolled for Adhaar, it was considered appropriate to mandate Adhaar Number wherever PAN is not available.

(iii) Guidelines on Common Service Centres

The IRDAI in an effort to expand the reach of insurance distribution to rural and semi-urban areas, has licensed CSC-SPV, an e-governance initiative taken by the Government of India, to distribute the small ticket insurance policies through the Rural Authorised Persons. These insurances include cattle insurance, motor insurance (tractors and other agricultural vehicles), term insurance, crop insurance etc to cater to the needs of the

rural population. This will enable the insurance companies to distribute their policies in Common Service Centres as a one stop solution. Clause 2(ii) of the guidelines made Aadhar identification mandatory. The entire CSC model is based on paperless/electronic identification of the prospect based on his biometric which is captured in Adhaar. This seamless process will not only reduce the paper work but also act as KYC for prospects. The entire model will become dysfunctional if it is not allowed to be continued thereby not only affecting the livelihoods of 3087 Rural Authorised Persons but also deprive the rural population from insurance coverage. The purpose of collecting the Adhaar details is for identification and authenticity of the prospective client. As on 31st August, 2015, this network has collected a total premium of Rs.137,36,12,622/- (includes new business and renewal business) and have serviced 4,86,976 customers.

(iv) Insurance Surveyors

Under Regulation 3(3) of the IRDAI (Insurance Surveyors and Loss Assessors) Regulations, 2015 every person who is a student member of the Institute and intending to act as a surveyor and loss assessor in respect of general

insurance business shall apply to the Authority for grant of license in FORM-IRDA-1-AF. The form should accompany along with other documents the Adhaar Number of the candidate for the purpose of identification for issuance of licence.

(v) Insurance Marketing Firm

Similarly under Insurance Regulatory and Development Authority of India (Registration of Insurance Marketing Firm) Regulations, 2015 in Form-A under clause 8.3 should provide the details of PAN Number or Adhaar number of their Insurance Sales Persons who would be soliciting and procuring insurance business. This information is required for the purpose of identification and authenticity of the Insurance Sales Person. Similarly under clause 8.4 of the Form-A, the insurance marketing firm should provide the details of PAN or Adhaar number of the person who will be undertaking insurance service activities. A similar requirement is there for Financial Service Executive under clause 8.5 for distribution of other financial products.

(vi) Insurance Repositories

As per the Revised Guidelines on Insurance Repositories and Electronic Issuance of Insurance Policies issued by

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the IRDAI on 29th May, 2015 a policyholder can open an e-Insurance Account with Insurance Repositories licensed by the IRDAI under the guidelines for the purpose of maintenance of their insurance portfolios in electronic form. Clause 60(b) of the guidelines specifies that a person wishes to open e-Insurance Account is required to submit an application form as prescribed under Annexure-11 of the said guidelines. As per the Form, PAN Number as well as the Aadhar Number of the individual proposes to open the e-Insurance Account are made mandatory for the purpose of identification and authenticity of the said individual.

The applicant/petitioner craves leaves to present the above mentioned regulations and other relevant documents in a compilation during the course of the arguments. In the alternative the applicant petitioner craves leave to file the relevant regulations and or other relevant documents as may be directed by this Hon'ble Court.

10. It is respectfully submitted that this Hon'ble Court while allowing the use of Aadhar for PDS and LPG scheme s was conscious of the important underlying rights therein which Aadhar sought to facilitate, viz. the right to food which is contained in Article 21 of the Constitution. However, it is also

submitted that the use of Aadhar numbers is contributory to the growth of insurance industry and also is necessary to protect the interest of the policy holders. The usage of Aadhar which have been introduced and in pursuance to establishment of UIDAI as mentioned above equally allow access to rights contained in Article 21 of the Constitution itself which is not inferior to the right to food since often the former is an enabler of the latter right and are all found within the content of Article 21 of the Constitution. Therefore, if this Hon'ble Court could allow the Government to implement the PDS and LPG Schemes through the Aadhar platform, there is no reason why Aadhar should not be allowed for these other equally important Regulations mentioned above.

11. That grave loss irreparable injury would be caused to the interest of the policy holders and also to growth of insurance industry if the interim order dated 11.8.2015 is not modified and or not clarified if the petitioner/applicant is not allowed to permit usage of Aadhar Card in the insurance industry particularly with respect to the aforesaid regulations and guidelines etc. as mentioned above. In case the said interim order is not modified the petitioner shall have to amend the statutory regulation/guidelines etc. which is not only time

consuming but also would create a confusion in the insurance industry.

12. Further, there is no credible apprehension of breach of privacy if this were to be permitted. The petition/applicant verily that during the course of proceedings in the above case it was noted by this Hon'ble Court as under:-

"The Learned Attorney General stated that the respondents do not share any personal information of an Aadhar card holder through biometrics or otherwise with any other person or authority. This statement allays the apprehension for now, that there is a widespread breach of privacy of those to whom an Aadhar card has been issued".

13. It is respectfully submitted that the applicant/petitioner shall comply with the said statement of the learned Attorney General as mentioned hereinabove to its letter and spirit. Thus, it is humbly submitted basis it is humbly submitted that there is no likelihood of any injury, irreparable or otherwise, to be caused to the public if this Hon'ble Court allows the use of Aadhar number/card as mentioned hereinabove.

PRAYER

It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to:

- (a) clarify or modify its order dated 11.8.2015 to allow usage of the Aadhar card to be used not only for the PDS scheme and LPG Distribution but also for any other Regulations/guidelines as mentioned hereinabove for the purposes of the growth of the Insurance Industry and also in the interest of policy holders.
- (b) Any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Drawn & Drafted by
Sh. Dipak K Nag
Advocate

Drafted on: 29.09.2015
New Delhi
Filed on 01-10-2015

Filed by

(Parmanand Gaur)
Advocate for the Applicant/
Petitioner

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IN THE SUPREME COURT OF INDIA

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Petitioners

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Union of India & Ors.

Respondents

A F F I D A V I T

I, Mukesh Sharma S/o Late Sh. D.P. Sharma aged about 59 years resident of Flat No. E-13, M.K. Residency Plot No. 8B Sector-11 Dwarka, New Delhi, presently working as Joint Director of the applicant/petitioner (IRDAI) do hereby solemnly affirm and state as under:-

1. That I am the Applicant/Petitioner in the above-noted application/petition as such I am well conversant with the facts of this case based on information derived from the office record of the case and I am competent to swear this affidavit.
2. That the application for modification/clarification which have been drafted under my instructions and I have understood the same and state that the facts stated therein are true to my knowledge on the basis of the information derived from the records of the case and are believed to be true.

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3. That the annexures to the application/petition are true copy of their originals and formed part of the record of the Courts below.

DEPONENT

VERIFICATION

I the above-named deponent do hereby verify that the facts stated in paras 1 to 3 of the above affidavit and true to my knowledge and are believed to be true and nothing material has been concealed therefrom from this Hon'ble Court.

Verified at New Delhi this the 30th day September of 2015

DEPONENT